LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 30 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 785

JOHN J. HALKO, JR., *Petitioner*

v.

RAYMOND W. ANDERSON, *Respondent*

On Motion for Certificate of Probable Cause Pursuant to the Provisions of 28 U.S.C.A., Section 2253

PETITION FOR WRIT OF CERTIORARI

JOHN J. KRAFSIG, JR.
and
JOSEPH NISSLEY
Attorneys for Petitioner
1719 North Front Street
Harrisburg, Pennsylvania

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX TO PETITION FOR WRIT OF CERTIORARI

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	3
Statute Involved	4
Statement	4
Reasons for the Allowance of a Writ of Certiorari	7

CITATIONS

Escobedo v. Illinois, 84 Sup. Ct. p. 1758	3, 6
Constitution of the United States, Fifth and Fourteenth Amendments	4, 7
21 Delaware Code, Section 2741(5)	9
28 U.S.C.A. Section 2253	2, 4

INDEX TO APPENDIX

Letter of United States District Court for the District of Delaware denying certificate of probable cause	1a
Orders of the United States Court of Appeals for the Third Circuit denying application for certificate of probable cause and petition for rehearing	2a
Denial of application for certificate of probable cause by Supreme Court of the United States (Associate Justice Brennan)	3a
Memorandum Opinion of the United States District Court for the District of Delaware	4a
Opinion of the Supreme Court of the State of Delaware	10a
Copies of various newspaper articles (Exhibits A to H)	19a-36a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No.

JOHN J. HALKO, JR., *Petitioner*

v.

RAYMOND W. ANDERSON, *Respondent*

On Motion for Certificate of Probable Cause Pursuant to the Provisions of 28 U.S.C.A., Section 2253

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE, THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

(a) A motion for a Certificate of Probable Cause was denied by Justice William J. Brennan, Jr., dated October 16, 1965, and mailed to counsel October 18, 1965 and notice was received on October 20, 1965, a true and correct copy of which is attached hereto and made a part hereof (App. p. 3a). On September 10, 1965, the United States Court of Appeals for the Third

Circuit denied the Appellant's request for a rehearing upon their refusal action of August 4, 1965, a true and correct copy of the Orders are attached hereto and made a part hereof (App. p. 2a). The United States District Court for the District of Delaware, Judge Caleb R. Layton, III, refused Certificate of Probable Cause on July 16, 1965, by means of a letter rather than a formal order, a true and correct copy of which is attached hereto and made a part hereof (App. p. 1a). The United States District Court for the District of Delaware issued a memorandum dated July 6, 1965, a true and correct copy of which said opinion is appended hereto in accordance with the rules of your Honorable Court (App. p. 4a). The said opinion has not been officially reported in the official reports. The opinion of the Supreme Court of the State of Delaware, dated April 21, 1965, and reported at 209 Atlantic 2nd 895 is appended hereto, in accordance with the rules of your Honorable Court (App. p. 10a).

(b) The basis for jurisdiction to be invoked in this case is made pursuant to the provisions of 28 U.S.C.A. Section 2253, which is, as follows:

> In a Habeas Corpus proceeding before a Circuit or District Judge, the final order shall be subject to review, on an appeal, by the Court of Appeals for the Circuit where the proceeding is had.
>
> There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.
>
> An appeal may not be taken to the Court of Appeals from the final order in a Habeas Corpus proceeding, where the detention complained of arises

out of process issued by a State Court, unless the Justice or Judge, who rendered the order, have a Circuit Justice or Judge issue a Certificate of Probable Cause; June 25, 1948 c. 646, 62 Stat. 967; May 24, 1949 c. 139, Section 113, 63 Stat. 105; October 31, 1951, c. 655, Section 52, 65 Stat. 727.

(i) The date of the judgment sought to be reviewed, to wit, the refusal action of Justice William J. Brennan, Jr. of October 16, 1965, in which notice was not received until October 20, 1965.

(ii) There was no order sought for a rehearing nor for an extension of time within which to file a Petition for a Writ of Certiorari.

(iii) The statutory provision believed to confer jurisdiction on your Honorable Court to review the judgment or order in question by Writ of Certiorari, is as set forth in 28 U.S.C.A. Section 2253. (Supra)

(c) The questions presented for review are as follows:

(i) Did the Supreme Court of the State of Delaware and the United States District Court fail to decide the case at hand in accordance with the applicable decisions of your Honorable Court with respect to the self-incrimination restrictions set forth in Escobedo v. Illinois, 84 Supreme Court, p. 1758?

(ii) Was the Petitioner deprived of a fair trial within the meaning of the Fifth and Fourteenth Amendments to the Constitution of the United States, in which he was denied the opportunity to prove that he had no criminal intent to violate

the statute under which he was convicted, and which makes no provision for the element of intent?

(iii) Was the Petitioner denied due process under the Fifth and Fourteenth Amendments to the Constitution of the United States, in which he was denied the right of cross-examination concerning a copy of an alleged improper application, which was the sole basis for the State of Delaware to bring their prosecution?

(iv) Was it error to deny the Petitioner's motion for a Certificate of Probable Cause and to deny him a hearing when matters of public record, more particularly set forth herein conclusively established that the Governor of the State of Delaware and the Attorney General of the State of Delaware seek corrective legislative and grand jury probes for the very same matters that the Petitioner was prosecuted?

(v) Was the Petitioner's constitutional rights against self-incrimination violated when he was interrogated by the office of the Attorney General for the State of Delaware from 5:00 p.m. until 11:30 p.m. on January 7, 1963, without being advised of his constitutional rights against self-incrimination, and notwithstanding, that a "critical stage" had been clearly reached?

(d) The principal statute involved in this Petition is 28 U.S.C.A., Section 2253, set forth *supra.*

(e) The facts material to the consideration of the questions presented are as follows:

(i) The Petitioner came into possession of certain knowledge of alleged improper acts and con-

duct on the part of employees of the Motor Vehicle Department of the State of Delaware.

(ii) The Petitioner in order to prove to the responsible authorities of the State of Delaware, that such improper acts did in fact exist, went to the Motor Vehicle Department and consulted with one Glynn a, driving examiner of the Motor Vehicle Department. Glynn filled out an incorrect application for a driver's license, although Glynn knew who the Petitioner was, as supported by the record in this case, and subsequent thereto, delivered an operator's license to the Petitioner.

(iii) The Petitioner never used the operator's license, but gave the license to a Mr. Simon, the accountant for the Petitioner, who ultimately delivered the license to the office of the Attorney General of the State of Delaware at the instructions of the Petitioner.

(iv) The Petitioner first went to the Wilmington City Police, then to the office of the State Police to no avail and finally called the office of the Attorney General of the State of Delaware to report the illegal activities occurring in the Motor Vehicle Department.

(v) The Petitioner received an appointment with Peter Green, Deputy Attorney General for the State of Delaware at the office of the Attorney General on January 7, 1963. The Petitioner was not represented by counsel at this meeting and was not warned of his constitutional right against possible self-incrimination and was interrogated from 5:00 p.m., until 11:30 p.m.

(vi) As a result of the contents of the interrogation, he was instructed to return the next day to the office of the Attorney General and then was placed under oath and then advised of his constitutional rights against self-incrimination, notwithstanding, that the "critical stage," and the information received the evening before had already prejudiced the Petitioner's right against self-incrimination within the meaning of the decision of your Honorable Court in Escobedo v. Illinois, 84 Supreme Court, p. 1758.

(vii) After the Petitioner had been convicted of the within mentioned circumstances set forth supra, the Governor of the State of Delaware, Charles L. Terry, Jr., ordered an investigation of the very same illegal practices for which the Petition had attempted to bring to the attention of the proper authorities of the State of Delaware, which action by the Governor of the State of Delaware is more particularly set forth in Petitioner's newspaper articles, attached hereto and made a part hereof.

(viii) That the action of the governor of the State of Delaware occurred on or about September 9, 1965, which was subsequent to the appeal filed before the United States District Court for the District of Delaware and the United States Court of Appeals for the Third Circuit, in which neither court had the benefit of this information.

(ix) That the particular Statute under which the Petitioner was convicted, although it is a criminal statute, makes no provision for the element of intent and the Petitioner was denied the right to introduce evidence in his trial for the pur-

pose of showing that he had no fraudulent intent to deceive, when he made the driver's license application, and therefore, in violation of the Petitioner's constitutional rights to a fair trial within the meaning of the Fifth and Fourteenth Amendments to the Constitution of the United States.

(f) No review of the judgment of the Supreme Court of Delaware is sought at this time because all that the Petitioner is seeking is a Certificate of Probable Cause to issue. The Federal question, that is raised before the court at this time, is the question, as to whether or not there are sufficient substantial matters to be considered, that justify the issuance of a Certificate of Probable Cause. The Petition for a Certificate of Probable Cause was requested of the United States District Court for the District of Delaware and to the United States Court of Appeals for the Third Circuit, who refused the motion, notwithstanding that the record of the hearing before the United States District Court had not been transcribed and available to both courts, although request had been made. Upon receipt of the refusal action of both courts, a Petition was immediately filed with Justice Brennan of your Honorable Court. The method of raising these questions was by way of motion and no opinions other than Per Curiam Orders were rendered.

(g) No review of a judgment of a Federal Court is sought other than the motion to obtain a Certificate of Probable Cause.

(h) The Petitioner believes that a writ should be allowed and a Certificate of Probable Cause issue by reason of the following:

This case and the subsequent appeals were made necessary by the action of the Delaware Supreme Court, which permitted the Petitioner to be prosecuted for bringing to the attention of the Delaware authorities certain illegal activities in the Department of Motor Vehicles. After the Petitioner's conviction and his Petition for a Writ of Habeas Corpus to the United States District Court for the District of Delaware, it has been most difficult to ascertain why a Certificate of Probable Cause should not issue. The United States District Court Judge in the transcribed record of testimony at page 32 of the record, indicated the recognition of some of the unusual aspects of this case, although he resolved his findings against the Petitioner, it would appear that there was sufficient substance to justify the issuance of a Certificate of Probable Cause in this matter. We further are of the opinion that the Petitioner should be permitted to have his case argued on the merits rather than to be denied his day in court for the lack of the Certificate of Probable Cause. THE VERY UNUSUAL ASPECT OF THIS CASE is the fact that when the Petitioner, two (2) years prior to a public revelation of illegal practices in the Motor Vehicle Department, made this information known to the Delaware authorities, was prosecuted for the very matter that the same Attorney General and the State of Delaware is now seeking to redress by legislative action, as set forth in the newspaper articles made a part of this Petition. A reading of the newspaper articles (Appendix, pp. 19a-36a), we respectfully believe, will show the substantial injustice to the Petitioner by denying him the opportunity to show on the merits

that he did a most laudable service and had no criminal intent to do the same. The Supreme Court of the State of Delaware had held that the Petitioner may be convicted on a criminal statute, to wit 21 Delaware Code, Section 2741 (5) states that no person shall:

> "Use a false or fictitious name or give a false or fictitious address in any application for an operator's or chauffeur's license, or any renewal or duplicate thereof, or knowingly make a false statement or knowingly conceal a material fact *or otherwise commit a fraud* in any such application or in any examination for an operator's or chauffeur's license."

which makes no recognition of intent or the lack of intent. The Petitioner is constrained not to make argument upon the merits of the same by reason of the relief that he is seeking, but at the same time, demonstrates a substantial question which we believe justifies the issuance of a Certificate of Probable Cause. The factual situation clearly demonstrates that the Petitioner who turned over the illegal operator's license to the Attorney General, had no criminal intent whatsoever. At the same time, neither the United States District Court or the Circuit Court of Appeals had the benefit of the authenticated newspaper articles which occurred subsequent to both decisions supporting the very matters that the Petitioner raised and for which the GOVERNOR of the State of Delaware saw fit to make a matter of public record. Surely when these matters are considered, together with the context of matters involved, there can be no real prejudice to the State of Delaware to grant

the Certificate of Probable Cause, as compared to the injustice and hardship to be imposed upon the Petitioner by denying the same. At the very least, it is respectfully hoped that the Petitioner be permitted to have this case argued to the United States Court of Appeals upon its merits. The Supreme Court of Delaware and the United States District Court for the District of Delaware, it is respectfully submitted, did not decide the matter of having the Petitioner answer questions at the initial meeting, which turned into an accusatory meeting, consistent with the decision of your Honorable Court, as set forth in the Escobedo case supra.

(i) Submitted herewith are true and correct copies of all opinion and orders rendered relative to the case at hand.

(j) A review of a judgment of the State Court is not sought at this time, rather a review of the refusal action of the United States District Court for the District of Delaware and the refusal action of the United States Court of Appeals for the Third Circuit, for a Certificate of Probable Cause.

Respectfully submitted,

JOSEPH NISSLEY, *Esquire*

and

JOHN J. KRAFSIG, JR., *Esquire*
Attorneys for Petitioner

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HABEAS CORPUS No. 45

JOHN J. HALKO, JR., *Petitioner,*

v.

RAYMOND W. ANDERSON, *Respondent.*

CERTIFICATE OF PROBABLE CAUSE

WHEREAS, John J. Halko, Jr., Petitioner above-named, has filed a Notice of Appeal in this Court thereby appealing to the United States Court of Appeals for the Third Circuit from the Order of this Court denying his Petition for a Writ of Habeas Corpus entered in this action on July 14, 1965, and

WHEREAS, 28 U.S.C. § 2253 requires a Certificate of Probable Cause as a prerequisite to an appeal,

NOW, THEREFORE, this 14th day of July, 1965, this Court certifies for purposes of 28 U.S.C. § 2253 that probable cause exists for this Petitioner's appeal.

CALEB R. LAYTON, III, *Judge*

This application denied
this 16th day of July 1965

C. R. LAYTON,
Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C. A. Misc. Record No. 201

JOHN J. HALKO, JR., *Appellant,*

v.

RAYMOND W. ANDERSON, *Appellee.*

Present: MCLAUGHLIN, HASTIE AND SMITH, Circuit Judges

Order

The application for certificate of probable cause for appeal is without merit and is denied.

By the Court,

MCLAUGHLIN
Circuit Judge

Dated: August 4, 1965

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C. A. Misc. Record No. 201

JOHN J. HALKO, JR., *Appellant,*

v.

RAYMOND W. ANDERSON, *Appellee.*

Present: BIGGS, *Chief Judge,* and MCLAUGHLIN, KALODNER, HASTIE, GANEY, SMITH and FREEDMAN, *Circuit Judges*

Order

The petition for rehearing on our order in this cause of August 4, 1965 is denied.

By the Court,

MCLAUGHLIN
Circuit Judge

Dated: September 10, 1965

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

October 18, 1965

John J. Krafsig, Jr., Esq.
1719 North Front Street
Harrisburg, Pennsylvania 17102

RE: JOHN J. HALKO, JR. v. RAYMOND W. ANDERSON
October Term, 1965

Dear Mr. Krafsig:

The application for a certificate of probable cause in the above-entitled matter was presented to Mr. Justice Brennan, who denied the application with the following endorsement:

"Application for Certificate of
Probable Cause denied
S/ Wm. J. Brennan, Jr.
Associate Justice
10/16/65"

Very truly yours,

JOHN F. DAVIS, *Clerk*

By EDWARD C. SCHADE
E. C. Schade
Assistant Clerk

ECS:jmh

cc: The Honorable David P. Buckson
Attorney General of Delaware
Wilmington, Delaware

AIR MAIL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Habeas Corpus No. 45

JOHN J. HALKO, JR., *Petitioner,*

v.

RAYMOND W. ANDERSON, *Respondent.*

FREDERICK KNECHT, JR., of Knecht & Conte, Wilmington, Del., for petitioner.

PETER WARREN GREEN, Deputy Attorney General, State of Delaware, for respondent.

Memorandum Opinion

July 6, 1965

LAYTON, *District Judge*

The defendant Halko was convicted by a jury of violating 21 Del. C. § 2741(5) which prohibits, inter alia, the giving of a false name or address in making application for a driver's license.

After his conviction in the Superior Court, defendant moved for judgment of acquittal which was denied and then appealed to the Supreme Court of Delaware where his conviction was affirmed. This petition followed.

The facts as stated by the Supreme Court of Delaware, 209 A. 2d 895, seem to be conceded as correct, and for the purpose of convenience are here restated:

> "Halko's license had previously been revoked. In October, 1962, he had a conversation with one Glynn, employed as an inspector and driving examiner of the Motor Vehicle Department in October, 1962. In the course of this conversation Glynn stated he could obtain for Halko an operator's license and, following further

meetings, Halko went with Glynn to the Motor Vehicle Department where an application for a license was obtained and filled out containing the false statements referred to above. On the same day and in the Motor Vehicle Department Halko was approached by one Hollett, an employee of the Motor Vehicle Department, who inquired if he was the one Glynn had spoken about. When Hollett ascertained this, he shook hands with Halko who then left. His application was then approved, apparently by Hollett, indicating that he had received the preliminary examination.

"Approximately ten days later, Glynn told Halko that sufficient time had elapsed for him, Glynn, to report that he had given Halko a road test and that he had passed. Some time later, as a result of all of this, an operator's license was delivered to Halko. Halko testified that upon receipt of the license he put it in his desk drawer. Some time later, for a reason which will subsequently appear, he delivered it to a Mr. Simon, his accountant, to be held by him. The license ultimately was delivered to the Attorney General by Mr. Simon.

"While all of this was taking place, other events were occurring contemporaneously. Halko is engaged in the manufacture and sale of storm windows and aluminum products for the home. Over a period of time thefts were taking place at his place of business. He ultimately discovered that one of his employees was probably involved in these thefts and, accordingly, he retained a detective agency to investigate. This agency, following an investigation, produced information implicating some of Halko's employees and others. One of these other persons was Glynn.

"Halko testified that when Glynn learned that he knew of his implication in the thefts, he threatened Halko with prosecution under 21 Del. C § 2741(5).

Following this alleged threat, Halko delivered the license in question to Mr. Simon.

"Thereafter, Halko went to the State Police, the Wilmington City Police, the Wilmington City Solicitor's office and, finally, to the office of the Attorney General to report the thefts occurring and, also he testified, to report illegal activities occurring in the Motor Vehicle Department.

"Halko finally received an appointment at the Attorney General's office on January 7, 1963. His interview at the time lasted from 5:00 p.m. until 11:30 p.m. He was not warned of any constitutional right against self-incrimination. At this interview he reported as to the results of the detective agency's investigation and, also, sufficient of the events leading up to the issuance to him of the false operator's license to cause the Deputy Attorney General interviewing him to suspect that a criminal violation had taken place on the part of Halko.

"At the close of this first interview, Halko was requested to return to the Attorney General's office the following night. At this time, present in addition to Halko were the Deputy Attorney General concerned, the State Detective, and Captains Howell and Martinelli of the police force. On this occasion Halko was put under oath and the Deputy Attorney General explained to him his constitutional rights against self-incrimination, and that any statement he made might be used against him in a subsequent prosecution. Despite this, Halko at length repeated the circumstances concerning the license he had first told the Deputy Attorney General on the night before.

"At the trial the statements made by Halko at the second meeting in the Deputy Attorney General's presence were introduced into evidence. Halko, him-

self, took the stand in his own defense and repeated at length the entire circumstances."

The first ground is that petitioner did not receive a fair trial under the Fifth and Fourteenth Amendments because the application containing false statements based upon which he received the license was improperly admitted into evidence. The objection was that 10 Del. C. § 4308 provides for the admission into evidence of a copy of a document kept in a public office when certified to by the head, or acting head, of the particular office. The copy of the application under attack was offered by Lieut. Regan of the State Police. While not strictly the head or acting head of the office in question, his connection with it was such that the Delaware Supreme Court, with full knowledge of the facts said:

> "We think Halko is unduly technical in seeking to bar admission of this license application from evidence on the strength of the referred-to statute. In the first place, *Regan's testimony is of such nature concerning his direct activities with the files from which this application came as to justify describing him as acting chief officer for the time being of the office in charge of records* * * *." (Emphasis added.)

In any event, no prejudice resulted. Actually, the record when carefully read discloses that later in the trial the *original* of the application was offered and substituted for the copy which would seem to remove all doubt as to authenticity. Indeed, at the argument on this petition, there seemed no doubt in the mind of all counsel that this had been done. Although not absolutely bound by rulings of state tribunals on questions of evidence, federal courts should, as I do, consider themselves bound by rulings such as here where the admission of the document is based upon an interpretation of a state statute (the constitutionality of which is not challenged) in connection with a factual

determination by a state's highest court as to the official status of a state officer.

Moreover, petitioner's argument that he was deprived of cross-examination by the substitution of the original is difficult to comprehend. The original and copy were exact duplicates. What there was to cross-examine about is impossible to conjecture.

Next, petitioner complains that he did not receive a fair trial within the meaning of the Fifth and Fourteenth Amendments because (1) the State trial court refused to permit him to introduce evidence to the effect that he had no fraudulent intent to deceive when he made the false license application and (2) because the Court refused to charge the jury that a finding of a specific wrongful intent to deceive was necessary in order to convict.

The State Supreme Court properly overruled this ground of contention by holding that 21 Del. C. § 2741(5)[1] is one of a class of statutes not requiring a specific intent. It stated:

> "Since the offenses charged against Halko [giving a false name and giving a false address] require no specific criminal intent, the general rule is applicable, and the mere fact of the signing and giving of the application, constitutes the offense for which he has been convicted."

I find this contention to be without merit.

Finally, petitioner claims that he was deprived of certain rights granted by the Fifth, Sixth and Fourteenth Amendments to the federal Constitution in that he was not represented by counsel at the time of the making of the incriminating statements before the Attorney General. In this connection, he relies on Escobedo v. Illinois, 84 Sup. Ct.

---

[1] Sec. 2741(5) states inter alia that no person shall "use a false or fictitious name or give a false or fictitious address in any application for an operator's or chauffeur's license • • •."

1758 and Russo v. New Jersey, #14833 U.S. Ct. of Appeals (3d Cir. 1965). *Escobedo* is not even remotely applicable because, whether or not the proceeding where defendant made the admissions (the second meeting) was at an accusatory stage, which in my judgment it was not, he never asked for a lawyer. Furthermore, he was fully warned of his constitutional rights to remain silent and yet spoke out freely and fully.

Halko v. *State* was decided prior to *Russo* and contained no discussion of that opinion. As I read it, it does not govern the case at bar. In the first place Halko, unlike Russo, is an intelligent, successful businessman. He was represented by counsel, who although not present, had originally arranged the first interview with the Deputy Attorney General. Secondly, Halko, unlike Russo, at the second interview was fully warned of his right to remain silent and, nevertheless, proceeded on to make the statements in question. Thirdly, in my opinion, the proceeding was not in an accusatory stage when Halko made the questioned statements. Rather, he was in the process of accusing the State Motor Vehicle Department of improper practices. Nothing said at the first meeting was used against petitioner at trial and, as just stated, at the second meeting he was fully warned of his rights, proceeded to speak freely, and at his trial under interrogation by his own lawyer reaffirmed all he said at the second meeting. Under such facts, it is unreasonable to argue that either *Escobedo* or *Russo* govern this case. However, should the contrary be found, I regard Halko's conduct as evidencing a voluntary waiver of his constitutional rights.

The petition is denied.

Wilmington, Delaware

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 1, 1964

JOHN J. HALKO, JR., *Appellant,*

v.

STATE OF DELAWARE, *Appellee.*

Opinion

(April 21, 1965)

WOLCOTT, *Chief Justice;* CAREY, *Justice,* and WRIGHT, *Judge,* sitting.

Appeal from the Superior Court in and for New Castle County.

FREDERICK KNECHT, JR., of Wilmington for appellant.

PETER WARREN GREEN, Deputy Attorney General of Wilmington for State.

WOLCOTT, C. J.:

This is an appeal from the conviction after a jury trial of the violation of 21 *Del. C.,* § 2741(5) prohibiting the use of a false statement in any application for an operator's motor vehicle license, or any renewal thereof. The appellant, Halko, was charged with giving upon an application for an operator's license a false name, a false address, and with making two false statements to the effect that he had never previously had an operator's license and that no previously granted license had ever been revoked. He was found guilty by the jury and appeals to this court.

We briefly state the facts.

Halko's license had previously been revoked. In October, 1962, he had a conversation with one Glynn, employed as

an inspector and driving examiner of the Motor Vehicle Department in October, 1962. In the course of this conversation Glynn stated he could obtain for Halko an operator's license and, following further meetings, Halko went with Glynn to the Motor Vehicle Department where an application for a license was obtained and filled out containing the false statements referred to above. On the same day and in the Motor Vehicle Department Halko was approached by one Hollett, an employee of the Motor Vehicle Department, who inquired if he was the one Glynn had spoken about. When Hollett ascertained this, he shook hands with Halko who then left. His application was then approved, apparently by Hollett, indicating that he had received the preliminary examination.

Approximately ten days later, Glynn told Halko that sufficient time had elapsed for him, Glynn, to report that he had given Halko a road test and that he had passed. Sometime later, as a result of all of this, an operator's license was delivered to Halko. Halko testified that upon receipt of the license he put it in his desk drawer. Some time later, for a reason which will subsequently appear, he delivered it to a Mr. Simon, his accountant, to be held by him. The license ultimately was delivered to the Attorney General by Mr. Simon.

While all of this was taking place, other events were occurring contemporaneously. Halko is engaged in the manufacture and sale of storm windows and aluminum products for the home. Over a period of time thefts were taking place at his place of business. He ultimately discovered that one of his employees was probably involved in these thefts and, accordingly, he retained a detective agency to investigate. This agency, following an investigation, produced information implicating some of Halko's employees and others. One of these other persons was Glynn.

Halko testified that when Glynn learned that he knew of his implication in the thefts, he threatened Halko with

prosecution under 21 *Del. C.*, § 2741(5). Following this alleged threat, Halko delivered the license in question to Mr. Simon.

Thereafter, Halko went to the State Police, the Wilmington City Police, the Wilmington City Solicitor's office and, finally, to the office of the Attorney General to report the thefts occurring and, also, he testified, to report illegal activities occurring in the Motor Vehicle Department.

Halko finally received an appointment at the Attorney General's office on January 7, 1963. His interview at that time lasted from 5:00 p.m. until 11:30 p.m. He was not warned of any constitutional right against self-incrimination. At this interview he reported as to the results of the detective agency's investigation and, also, sufficient of the events leading up to the issuance to him of the false operator's license to cause the Deputy Attorney General interviewing him to suspect that a criminal violation had taken place on the part of Halko.

At the close of this first interview, Halko was requested to return to the Attorney General's office the following night. At this time, present in addition to Halko were the Deputy Attorney General concerned, the State Detective, and Captains Howell and Martinelli of the police force. On this occasion Halko was put under oath and the Deputy Attorney General explained to him his constitutional rights against self-incrimination, and that any statement he made might be used against him in a subsequent prosecution. Despite this, Halko at length repeated the circumstances concerning the license he had first told the Deputy Attorney General on the night before.

At the trial the statements made by Halko at the second meeting in the Deputy Attorney General's presence were introduced into evidence. Halko, himself, took the stand in his own defense and repeated at length the entire circumstances.

On these facts the case was submitted to the jury which returned a verdict of guilty.

First, Halko argues that the Superior Court had no original jurisdiction over the offense of which he was convicted. The reason urged is that Halko was tried upon four indictments presented to the Grand Jury as an original action in the Superior Court. He was notified of his indictment and told of the time of arraignment and to appear. He appeared without arrest, plead not guilty, and was released on bail. Halko relies upon 21 *Del. C.*, § 704, which provides that in the event of an arrest in Wilmington for a violation of any section of the Motor Vehicle Code, the person arrested shall be taken before a Justice of the Peace or the Municipal Court, and if the arrest is for a violation taking place outside the City of Wilmington he shall be taken before a Justice of the Peace.

The answer to the argument is that by 11 *Del. C.*, § 2701 (e), the Superior Court is given jurisdiction over all crimes except where exclusive jurisdiction has been vested in another court. Since exclusive jurisdiction over such violations has not been conferred upon any court it is apparent that the Superior Court has jurisdiction over violations of 21 *Del. C.*, § 2741(5).

Furthermore, we think 21 *Del. C.*, § 704, relied on by Halko, has no pertinency in this case, for the reason that no arrest of Halko took place. An arrest is a prerequisite to the operation of the provisions of § 704. Halko was indicted and notified of the indictment, and appeared voluntarily to be arraigned. We think, therefore, there is nothing to the argument made by Halko in this respect.

In his brief Halko argued that Article I, Section 8 of the Constitution, providing that no person for any indictable offense shall be proceeded against criminally by information, prevented the presentation of an indictment for violation of 21 *Del. C.*, § 2741(5). He pointed to the practice of

proceeding by information for misdemeanors in the statutory courts, and rather tenuously argued that this deprived the Superior Court of jurisdiction because a violaof a statute such as 21 *Del. C.*, § 2741 was not an indictable offense. At oral argument counsel for Halko withdrew the point by reason of the decision of this court in *State* v. *Cloud,* 159 A. 2d 588.

Next, Halko argues that error was committed by the introduction into evidence of the application for the operator's license in question. At the trial, Lieutenant Regan, a State Police Officer, Assistant Director of the Driver Improvement Bureau of the Motor Vehicle Department, identified the application as coming from the files of the Motor Vehicle Department in Dover to which he had access, and over which indirectly he had supervision. It is quite plain from the testimony of the Lieutenant that irrespective of who actually was charged with the duty of filing the various records concerned, he had direct access to them and responsibility for them.

The objection of Halko to the admission of this evidence is based upon 10 *Del. C.*, § 4308, which provides that a copy of any public record kept in a public office when certified to by the head or acting chief officer for the time being of that office shall be competent evidence.

We think Halko is unduly technical in seeking to bar admission of this license application from evidence on the strength of the referred-to statute. In the first place, Regan's testimony is of such nature concerning his direct activities with the files from which this application came as to justify describing him as acting chief officer for the time being of the office in charge of the records. We consequently find no error in the admission of this document into evidence. Furthermore, while there seems to be some doubt about the matter, it appears as though the offer into evidence was not of a copy of the application, but of the original application, itself.

Next, Halko urges that error was committed when the trial court refused to charge the jury, in accordance with his request, that he was entitled to the defense of entrapment.

The facts on which Halko relies to support his proposed defense of entrapment were those outlined in the statement of facts in this opinion, and consist primarily of his theory that Glynn, the Motor Vehicle Department's examiner, solicited him to commit the misdemeanors charged.

Entrapment is, of course, a defense under certain circumstances to prosecution for a crime. In order to constitute the defense of entrapment, however, it must appear, when the crime charged is not one requiring a specific criminal intent, that an officer charged with the enforcement of the law has actively solicited and procured the defendant to commit the offense in question. There seems to be little if any dissent from this view among the various jurisdictions. 15 *Am. Jur., Criminal Law,* § 335; 22 *C.J.S., Criminal Law,* § 45(2); 1 *Wharton's Criminal Law (12th Ed.),* § 390; 1 *Wharton's Criminal Law and Procedure,* § 132; 1 *Burdick, Law of Crime,* § 195.

Since the offenses charged against Halko require no specific criminal intent, the general rule is applicable, and the mere fact of the signing and giving of the application by Halko constitutes the offense for which he has been convicted.

Furthermore, another element in this case is missing in order to support the defense of entrapment. It is, we think, necessary for the person luring an unsuspecting defendant into the commission of a crime to be connected in some fashion with the active enforcement of the law. Glynn was not such. He was an examiner for operator's licenses employed by the Motor Vehicle Department pursuant to

21 *Del. C.*, § 308. As such, he was not a law enforcement officer in the usual sense, and the State cannot be charged with his conduct as a defense to an act, of itself, constituting a crime which a defendant freely admits having committed.

Finally, Halko argues that he was deprived of his constitutional rights when he was not advised by the Attorney General's office at his first meeting with the Deputy Attorney General of his right against self-incrimination. The difficulty with this argument is that no evidence obtained at this first meeting was used against him in his trial. The only statements used against him were those made at his second meeting in the Attorney General's office at which time he was under oath and had been fully advised of his constitutional rights but, nevertheless, chose to make the statements, the admission of which into evidence he now complains.

Under the circumstances, we think the point is entirely without merit, and that Halko must be held to have waived his constitutional right against self-incrimination.

Furthermore, if this is not enough, it must be of some significance, at least, to note that at his trial Halko, himself, took the witness stand and repeated fully the statements testified to by the police officers.

For the foregoing reasons the conviction below is affirmed.

APPELLANT'S EXHIBIT "A"

STATE OF DELAWARE
COUNTY OF NEW CASTLE } ss:

BE IT REMEMBERED, that on this 17 day of September, A. D. 1965, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, CHARLES M. HACKETT, who being first duly sworn according to law did depose and say:

1. That he is the Vice-President Executive Editor of the News Journal Company, 831 Orange Street, Wilmington, Delaware, publishers of the Wilmington Morning News and the Evening Journal.

2. That attached hereto as Exhibit A is a copy of an article which appeared on September 9, 1965, in the Wilmington Morning News on Page 1 and continuing to Page 3 pertaining to certain alleged illegal activities at the inspection lanes of the Delaware Motor Vehicle Department.

3. That attached hereto as Exhibit B is a copy of an article which appeared on September 9, 1965, in the Wilmington Evening Journal on Page 1 and continuing to Page 3 pertaining to certain alleged illegal activities at the inspection lanes of the Delaware Motor Vehicle Department.

4. That attached hereto as Exhibit C is an article which appeared on September 9, 1965, in the Wilmington Evening Journal on Page 2 indicating that a Justice Department Bill would soon be presented to the Delaware Legislature for passage.

5. That attached hereto as Exhibit D is an article which appeared on September 10, 1965, in the Wilmington Morning News on Page 1 and continuing to Page 2 pertaining to certain alleged illegal activities at the inspection lanes of the Delaware Motor Vehicle Department.

6. That attached hereto as Exhibit E is an article which appeared in the Wilmington Morning News on September 10, 1965, on Page 2 indicating that the Delaware Attorney General plans to help people who assist the police in making investigations concerning unsolved crimes in Delaware.

7. That attached hereto as Exhibit F is an article which appeared on September 10, 1965, in the Wilmington Evening Journal on Page 25 pertaining to certain alleged illegal activities at the inspection lanes of the Delaware Motor Vehicle Department.

8. That attached hereto as Exihbit G is an article which appeared on September 11, 1965, in the Wilmington Morning News on Page 1 pertaining to certain alleged illegal activities at the inspection lanes of the Delaware Motor Vehicle Department.

9. That attached hereto as Exhibit H is an article which appeared on September 11, 1965, in the Wilmington Evening Journal on Page 5 pertaining to certain alleged illegal activities at the inspection lanes of the Delaware Motor Vehicle Department.

CHARLES M. HACKETT
Charles M. Hackett

SWORN TO AND SUBSCRIBED before me the day and year first above written.

MARY H. REGISTER
Notary Public

EXHIBIT A

Terry Orders Probe In City

September 9, 1965

Charges that some inspectors at the Wilmington automoblie inspection lanes have been selling inspections for $5 apiece have been under investigation since last July, Motor Vehicle Commissioner Russell W. Whitby admitted yesterday.

The situation came to light when Gov. Charles L. Terry Jr. made public the text of a letter he sent yesterday to Whitby, ordering him to investigate wrongdoing at the lanes.

Whitby then revealed that an investigation by his office and the attorney general centering on the Wilmington lanes but including the others, has been in progress since early July. The only serious incidents uncovered have been in Wilmington, he said.

Henry T. Price, chairman of the state highway commission, said, "I believe there are grounds for the complaints and rumors, and as I understand it, all in the Wilmington area.

"I can assure the governor and the public that when the investigation is finished and people are found to have been at fault, stringent action will be taken."

Whitby said his office had been "doing some checking" for about a year, but began intensive investigation after receipt of a letter from Terry July 8 in which the governor said:

"I have received certain reports that some people are getting their cars registered without going through the inspection lanes. I would appreciate it if you would take

all immediate action necessary to see that this practice ceases in every registration lane in the state."

Terry released this letter yesterday also.

Whitby said a full report would be made to Terry within 10 days. However, Atty. Gen. David P. Buckson said the investigation will not be finished in that time.

"ALL I can confirm is that the attorney general's office is investigating the inspection lanes," Buckson said: "The investigation should be completed in about 30 days. When it is complete, proper action will be taken through the usual channels; the courts or whatever may be decided."

Buckson said he would have no comment on whether any wrongdoing has been discovered until the investigation is complete. He has not been in contact with Terry concerning it, he said.

Lacey C. Wilson, manager of the Wilmington lanes, has been "most co-operative," Buckson said.

Wilson declined comment on whether violations have been found. He said he knew of no investigation in progress except "the investigation I've conducted every day I've been here."

MANAGERS of both downstate lanes, Frank Dickerson in Georgetown and Marvel Everett in Dover, said they knew of no investigations nor of any such incidents in their operations.

Terry's letter to Whitby yesterday said:

"I am enclosing a copy of a letter I handed to you on July 8, 1965. In the last few days I have heard very disturbing rumors to the effect that for certain considerations persons are obtaining registrations for their automobiles without the

INSPECT

(Continued From First Page)

automobiles going through the inspection lanes.

"I am so strongly opposed to such a practice, if in fact it exists, that I am now instructing you to make an immediate investigation of any wrongdoing. Immediately upon completion of your investigation, if you should find persons guilty of any wrongdoing, I instruct you to relieve them of their duties.

"I further direct you to send a copy of your report to the governor and a copy to the attorney general."

Terry did not explain why he made the letter public before its delivery.

Whitby said he could only explain the second letter as "his effort to back me up even further." He said Terry has been kept informed on the investigation, though "not in detail."

In the scheme revealed, persons not wishing their cars to go through the inspection lanes would contact certain lane employes, who would provide for $5 each the inspection certificates required for licensing.

EXHIBIT B

ALLEGED: INSPECTIONS SOLD FOR $5

September 9, 1965

By WILLIAM P. FRANK

Atty. Gen. David P. Buckson today charged that the governor's disclosure of an investigation into alleged peddling of validated motor vehicle inspection cards has "probably damage" the probe investigation.

Buckson said he could not understand why Gov. Charles L. Terry, Jr., had made the investigation public. "He

makes this public just when we are in the midst of the investigation and still have areas to be studied.

Buckson wouldn't estimate just how much damage he thought had been done.

HE is meeting this afternoon with his staff and the investigation team to evaluate the status of the inquiry.

Yesterday Terry made public a letter he had sent to Motor Vehicle Commissioner Russell W. Whitby. It directed Whitby to investigate reports that unidentified inspection lane employes had been selling inspection cards for $5 each.

This was a follow-up letter to one the governor had sent Whitby on July 8.

Whitby confined that the investigation is under way, and said it will be completed in 10 days. He also said there are grounds for the reports of inspecting peddling, which, he said, was at $5 per "sold" inspection.

THE investigation is being handled by the attorney general's office through State Detective John J. Clarke Jr. and Lt. James Turner of the State Police.

At his press conference this morning, Buckson said he was "floored" by the disclosure of the investigation by Terry.

Buckson said "it is not the best accepted practice in an investigation to disclose that it is under way before it is finished."

He said he had not planned to discuss the matter at today's press conference.

ASKED if he thought there was some connection significant in the timing of the governor's release, 16 hours before the attorney general's press conference, Buckson said: "I have an idea that the governor's publicity man has to earn his excessive salt."

Buckson said the investigation is not over and that it was started at the request of Whitby some weeks ago. He said Whitby is doing a good job in helping with the investigation. He said he doesn't understand why the investigation should be made public and brought into the limelight.

BUCKSON said one of the problems is learning who has "benefitted" from the alleged sale of inspection cards. He said some persons have been found who have given information on that specific point, but he refused to elaborate further.

He said Terry has never con-

See PROBE—Page 3, Col. 5

PROBE DAMAGED, BUCKSON CLAIMS

(Continued From Page One)

tacted him about the investigation and at this afternoon's conference with Clarke and Turner he planned to learn just where the investigation stood.

Buckson said he does not believe a report can be ready in the 10 days, as Whitby had estimated.

In Terry's first letter to Whitby in July, Terry told Whitby he had received reports that some people were getting their cars registered without going through the inspection lanes. He told the motor vehicle commissioner to "take all immediate action necessary to see that this practice ceases in every registration lane in the state.

In his second letter, Terry said:

"I am enclosing a copy of a letter that I handed to you on July 8, 1965. In the last few days I have heard very disturbing rumors to the effect that for certain considerations persons are obtaining registrations for their automobiles without the automobiles going through the inspection lanes.

"I am so strongly opposed to such a practice, if in fact it exists, that I am now instructing you to make an immedi-

ate investigation of any wrongdoing. Immediately upon completion of your investigation, if you should find persons guilty of any wrongdoing, I instruct you to relieve them of their duties.

"I further direct you to send a copy of your report to the governor and a copy to the attorney general."

Terry did not explain why he made the letter public before its delivery.

Whitby said he could only explain the second letter as "his effort to back me up even further." He said Terry has been kept informed on the investigation, though "not in detail."

In the scheme revealed, persons not wishing their cars to go through the inspection lanes would contact certain lane employes, who would provide for $5 each the validated inspection certificates required for licensing.

Henry T. Price, chairman of the state highway commission, said "I believe there are grounds for the complaints and rumors, and as I understand it, all in the Wilmington area.

"I can assure the governor and the public that when the investigation is finished and people are found to have been at fault, stringent action will be taken."

Whitby said his office had been "doing some checking" for about a year, but began intensive investigation after receipt of the July 8 letter.

Lacey C. Wilson, manager of the Wilmington lanes, declined comment on whether violations have been found. He said he knew of no investigation in progress except "the investigation I've conducted every day I've been here."

Managers of both downstate lanes, Frank Dickerson in Georgetown and Marvel Everett in Dover, said they knew of no investigations nor of any such incidents in their operations.

EXHIBIT C

JUSTICE DEPT. BILL UP SOON, BUCKSON VOWS

September 9, 1965

From the Dover Bureau

DOVER — Atty. Gen. David P. Buckson today said he soon plans to offer bills to create a Department of Justice and to encourage citizens to help policemen enforce the law.

Buckson told his monthly press conference that his long-awaited Justice Department bill will be introduced as soon as the General Assembly reconvenes.

He didn't say when he would offer the other bill, which would be patterned after a California law that provides for reimbursement to citizens who suffer injuries or property losses in assisting policemen in catching lawbreakers and enforcing the law.

THIS legislation, he said, would be aimed at curing situations in which citizens stand idly by while crimes are being committed because of apathy and fear.

Buckson said the money to provide the reimbursements would have to come from the state and that each case would be reviewed by a special board. He suggested that such a board include the superintendent of state police; the president of the State Medical Council; the secretary of state; and a representative of the attorney general's office.

Buckson has been talking for years of the need for a Justice Department to provide more professional, full-time legal staff for the state.

HE gave reporters draft copies of the proposed Justice Department legislation. A preamble says the growth of Delaware has been accompanied by a growth in the need of state agencies and officials for legal services.

"The office of attorney general," the preamble continues, as presently constituted has not furnished in the

past, does not now and cannot furnish in the future all of said legal services with the result that various agencies employ their own attorneys."

Buckson said he also is working on plans for legislation that would establish licensing procedures for appliance repairmen.

He said a number of individual citizens have offered to help him in preparing guidelines for the legislation and that he plans to meet with them later this month.

He added, however: "Before proposing such a law, I would want to be in a position to say it would work."

EXHIBIT D

TERRY, BUCKSON CLASH ON INSPECTION PROBE

September 10, 1965

By WILLIAM P. FRANK

Gov. Charles L. Terry Jr. charged yesterday the attorney general and the motor vehicle commissioner bypassed his office in their investigation of allegedly fraudulent auto inspections.

Atty. Gen. David P. Buckson replied by referring to a published statement, attributed to Motor Vehicle Commissioner Russell W. Whitby, that he (Whitby) had kept the governor informed of the investigation in general, though not in detail.

Under investigation are allegations some auto inspectors have been "selling" inspections at $5 per car or truck, without even seeing the vehicles.

TERRY said on July 8 he sent a letter to Whitby, telling him of reports about auto inspection "peddling" and directing him to take action to stop it.

Yesterday, Terry said:

"I think it should be made clear that never once did the attorney general or the motor vehicle commissioner, in answer to my letter of July 8, inform me an investigation was being made, nor did the attorney general ask for or seek my cooperation. In fact, I have received no report, official or otherwise, since my letter of July 8."

The existence of the investigation became public Wednesday

See PROBE—Page 2, Col. 6

PROBE

(Continued From First Page)

afternoon, when Terry sent a second letter to Whitby, directing him to start an investigation and fire anyone involved in the fraudulent inspections.

The investigation started with the Wilmington Motor Vehicle Office and spread to all inspection lanes.

Lacey C. Wilson, manager of the Wilmington inspection office, said yesterday one inspector resigned "recently" but he refused to link it with the investigation.

Whitby said Wednesday night the investigation should be completed soon and a report ready within 10 days.

BUCKSON said, however, the investigation is not complete and won't be finished in 10 days, although, he added, "An interim, preliminary report could be made in two weeks."

The News-Journal has received unconfirmed reports from persons who say they have paid $5 each for phantom inspections of their cars. These informants have refused to give their names for fear of being charged with bribery.

Buckson said the investigation started May 17 when a state trooper, whom he declined to identify, came upon

rumors of the irregularities and after checking them, submitted his findings to Whitby early in June.

The investigation was then taken over by the attorney general's office, under the guidance of State Detective John J. Clarke Jr. and with help from state police.

BUCKSON said he knows Wilson, as manager of the Wilmington Motor Vehicle Office also had heard of auto inspection "peddling" last October and had made an effort "to tighten up operations in the lane."

The attorney general praised Wilson for his cooperation. Wilson said he had given all his information to the investigators, who told him "to keep my mouth shut."

Buckson charged yesterday at a press conference the governor's disclosure of the investigation at this time has "probably damaged" the probe.

Whitby was out of town on business and unavailable for further comment.

EXHIBIT E

BUCKSON PLAN WOULD HELP CITIZENS WHO ASSIST POLICE

September 10, 1965

Atty. Gen. David P. Buckson has a plan for helping citizens who are injured or suffer property damaged when they assist police or prevent a crime.

His plan, will be incorporated into a measure for introduction in the General Assembly, make it possible for such citizens to be compensated for injuries or property damage when "they became involved and helped police in the arrest of criminals or in the prevention of a crime."

He said many persons throughout the nation are declining to become involved when they see crimes committed because they are afraid of getting hurt.

HE cited a hypothetical case of a citizen who uses his car to block a bank robber — and the car is smashed.

"What does he get out of it now?" Buckson asked.

"Nothing but a wrecked car," he answered.

"Let's assume a citizen uses his car to apprehend a bank robber. See how much money the state saves in the apprehension in a short time. If this man's car is damaged, he is certainly entitled to some reimbursement.

"I'd like to encourage people to assist police, if they see the opportunity, and they are injured or their property damaged the state should be willing to take care of their costs."

BUCKSON has in mind for this purpose setting up a board of review to go over such claims. This board would consist of the superintendent of state police, the president of the State Medical Council, the secretary of state and the attorney general. The board would make recommendations to the General Assembly concerning payment of such claims.

Also in the line of proposed legislation, Buckson said at a press conference yesterday, he has ready for submission to the General Assembly a measure to set up a Department of Justice, under the control of the attorney general's office.

The measure would provide for a $20,000-a-year salary for the attorney general. The present salary for the attorney general is $11,000. In other developments:

—Buckson said Dr. Ali Z. Hameli, state medical examiner now has the authority to make public reports on suicides. Buckson also is chairman of the Board of Post-Mortem Examiners.

Hameli had been refusing to state a person who killed himself was classified as a suicide although the medical examiner has been keeping statistics on the state suicide rate.

—BUCKSON reported he intends to have introduced legislation to establish examination and certification of repairmen and mechanics.

—Buckson said he was pleased to learn of the formation of a Better Business Bureau of Delaware.

PROBE—

(Continued From First Page)

afternoon, when Terry sent a second letter to Whitby, directing him to start an investigation and fire anyone involved in the fraudulent inspections.

The investigation started with the Wilmington Motor Vehicle Office and spread to all inspection lanes.

Lacey C. Wilson, manager of the Wilmington inspection office, said yesterday one inspector resigned "recently" but he refused to link it with the investigation.

Whitby said Wednesday night the investigation should be completed soon and a report ready within 10 days.

BUCKSON said however, the investigation is not complete and won't be finished in 10 days, although, he added, "An interim, preliminary report could be made in two weeks."

The News-Journal has received unconfirmed reports from persons who say they have paid $5 each for phantom inspections of their cars. These informants have refused to give their names for fear of being charged with bribery.

Buckson said the investigation started May 17 when a state trooper, whom he declined to identify, came upon rumors of the irregularities and after checking them, submitted his findings to Whitby early in June.

The investigation was then taken over by the attorney general's office, under the guidance of State Detective John J. Clarke Jr. and with help from state police.

BUCKSON said he knows Wilson, as manager of the Wilmington Motor Vehicle Office also had heard of auto inspection "peddling" last October and had made an effort "to tighten up operations in the lane."

The attorney general praised Wilson for his cooperation. Wilson said he had given all his information to the investigators, who told him "to keep my mouth shut."

Buckson charged yesterday at a press conference the governor's disclosure of the investigation at this time has "probably damaged" the probe.

Whitby was out of town on business and unavailable for further comment.

EXHIBIT F

CAR-LANE 'PHANTOM': REPORT SOON

September 10, 1965

By WILLIAM P. FRANK

Sources within the Motor Vehicle Department today said the governor will receive an interim report on the investigation of alleged fraudulent auto inspection validations within two weeks.

These sources declined to be identified because Motor Vehicle Commissioner Russell W. Whitby is in Hartford, Conn., and will not be back in Delaware until Monday.

Gov. Charles L. Terry Jr., leaves tomorrow for Sea Island Ga., for the Southern Governors Conference. If a report does materialize before he returns Thursday, it may be sent to him there by messenger.

A hassle between Terry and Atty. Gen. David P. Buckson, in charge of the investigation, continues, principally over the issue of keeping the governor informed of the investigation.

Yesterday Terry said neither Buckson nor Whitby had ever given him any kind of a report on the investigation.

Buckson's reply to this was a reference to a public statement, attributed to Whitby, that he (Whitby) had kept the governor in touch with the investigation in a general way.

Henry T. Price of Smyrna, chairman of the highway commission, to which Whitby is responsible, today said that he himself had not known of the investigation until about three weeks ago.

"WE never discussed it among highway commissioners," Price said, "because I assumed that the investigation was in proper hands and was making progress."

Price also said that he had not discussed the investigation with the governor.

Terry had sent two letters to Whitby about reports of motor vehicle inspectors peddling validated inspection cards at the rate of $5 per car without the car ever being seen at a motor vehicle lane.

One letter was dated July 8 and the other last Wednesday. It was Wednesday's letter that Terry made public, leading to the disclosure that an investigation by the attorney general's office was underway.

ACCORDING to a spokesman in the governor's office, Terry did not know of any investigation until Wednesday morning. It was this, the spokesman said, that prompted Terry to send the second letter to Whitby, directing him to fire any employee found to have been involved in auto inspection peddling.

The governor issued a statement, outlining his position in this controversy. He stated:

"It is my strong belief and fundamental understanding that the duty of the governor requires him to exercise

over-all administrative control of the executive department of this state.

"When word came to me that there was a possibility of wrong doing in one of the agencies, I wanted it to be immediately clear to all concerned that it would not be tolerated and that responsible state officials had the authorization to take all necessary steps to see to it that such practices ceased forthwith and that those who perpetrated any such action were relieved of their duties.

"I think it should be made clear that never once did the attorney general or the motor vehicle commissioner in answer to my letter of July 8 inform me that an investigation was being made; nor did the attorney general ask for or seek my cooperation. In fact, I have received no report, official or otherwise since my letter of July 8.

"It is the governor of the state and not the attorney general who has the obligation to assure the lawful and smooth functioning of the executive department.

"As long as I'm governor, I shall exercise that responsibility. Whenever the attorney general should seek the help of the governor, pertaining to any investigation of any agency, he, upon such request, will receive my full cooperation."

THE investigation started with the Wilmington Motor Vehicle Office and spread to all inspection lanes.

So far there has been no indication from the official sources as to who the employees involved might be or the methods by which the fraudulent inspections could have been obtained.

Impatience with the inconvenience of the inspection procedure, which sometimes requires a long wait and the removal of trucks from service for an extended period by owners of heavier equipment, and anxiety over whether a vehicle would pass are obvious reasons such a racket might flourish.

Lacey C. Wilson, manager of the Wilmington inspection office, said one inspector resigned "recently" but he refused to link the resignation with the investigation.

Buckson said yesterday, the investigation is not complete and won't be finished in 10 days, although, he added, "An interim, preliminary report could be made in two weeks."

THE News-Journal has received unconfirmed reports from persons who say they have paid $5 each for phantom inspections of their cars. These informants have refused to give their names for fear of being charged with bribery.

Buckson said the investigation started May 17 when a state trooper, whom he declined to identify, came upon rumors of the irregularities and after checking them, submitted his findings to Whitby early in June.

The investigation was then taken over by the attorney general's office, under the guidance of State Detective John J. Clarke, Jr. and with help from state police.

The attorney general praised Wilson for his cooperation. Wilson said he had given all his information to the investigators, who told him "to keep my mouth shut."

EXHIBIT G

BUCKSON ASKS TIPS ON INSPECTIONS

September 11, 1965

By William P. Frank

Atty. Gen. David P. Buckson yesterday invited citizens to contact his office if they have information about any fraudulent inspection of motor vehicles.

The attorney general's office is investigating charges that some persons have purchased favorable inspection reports for motor vehicles without having submitted to inspection.

Buckson made the invitation when he was told that some persons willing to talk about having bought inspections but are afraid of being charged with bribery of public officials.

"If these people come forward willingly and give us information that can help our investigation, they have nothing to fear," Buckson said.

Meanwhile, a source within the motor Vehicle Division who declined to be identified said yesterday that there is a good chance that an interim report on the investigation will be made to Gov. L. Terry within two weeks.

Lacey C. Wilson, manager of the Wilmington motor vehicle lane, reported that some people are condemning this entire staff becuuse of the recent news on the investigation.

"These kinds of remarks are unfair to the members of my staff who are honest and hardworking, despite their low pay," he said.

Wilson said that inspectors had, until recently, gotten $250 a month pay. Since July 1, they have been getting $325 a month.

EXHIBIT H

BUCKSON WANTS TIPS ON FRAUD

September 11, 1965

Persons who say they bought inspection reports without having motor vehicles inspected should come forward with the information, Atty.-Gen. David P. Buckson said yesterday.

Buckson's office is investigating charges that such "phantom" inspections can be bought for $5.

He invited citizens to contract his office after he was told that some persons willing to talk about buying inspections are afraid of being charged with bribery of public officials.

"If these people come forward willingly and give us information that can help our investigation, they have nothing to fear," Buckson said.

Lacey C. Wilson, manager of the Wilmington motor vehicle lane, reported that some people are condemning his entire staff because of the investigation.

"These kinds of remarks are unfair to the members of my staff who are honest and hardworking, despite their low pay," he said.

Wilson said that inspectors had, until recently, gotten $250 a month pay. Since July 1, they have been getting $325 a month.